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7 Attorneys for Defendant,  
8 CAPITAL ONE BANK (USA), N.A.,  
9 erroneously sued as  
10 Capital One, National Association

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 CHARLES EICHER,  
14  
15 Plaintiff.  
16 v.  
17 CAPITAL ONE, NATIONAL  
18 ASSOCIATION,  
19 Defendant.

Case No.

**NOTICE OF REMOVAL OF ACTION  
TO THE UNITED STATES DISTRICT  
COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA UNDER  
28 U.S.C. § 1441(a), 28 U.S.C. §1331  
(FEDERAL QUESTION) and 28 U.S.C. §  
1367(a) (SUPPLEMENTAL  
JURISDICTION)**

*(Filed concurrently with: (1) Civil Case  
Cover Sheet; and (2) Notice of Interested  
Parties)*

Complaint Filed: November 26, 2014

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA:**

**PLEASE TAKE NOTICE THAT** defendant Capital One Bank (USA), N.A. (“Capital One”), erroneously sued as “Capital One, National Association,” hereby invokes this Court’s jurisdiction under the provisions of 28 U.S.C. § 1441(a), 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a), and removes this action from state court to federal court pursuant to 28 U.S.C. § 1446(b).

**A. JURISDICTION**

1. Capital One specifically alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1441(a) and § 1331 because Plaintiff Charles Eicher (“Plaintiff”) alleges a cause of action arising under the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, which is a law of the United States. Further, the Court has supplemental jurisdiction over the state law causes of action alleged in the Complaint pursuant to 28 U.S.C. § 1367(a).

**B. STATEMENT OF THE CASE**

2. On November 26, 2014, Plaintiff filed a Complaint in the Superior Court of the State of California for the County of Riverside, designated as Case Number RIC 1411379 (the “Action”). Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders served upon Capital One in this case is attached hereto as Exhibit A.

3. Plaintiff asserts two causes of action in his Complaint against Capital One. Those causes of action include: (1) violations of the California Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”), Cal. Civ. Code § 1788, *et seq.*; and (2) violations of the TCPA, 47 U.S.C. § 227.

**C. BASIS FOR REMOVAL**

4. This Court has jurisdiction over this Action pursuant to 28 U.S.C. § 1331 because Plaintiff alleges a TCPA cause of action, which is a law of the United States.

5. Specifically, Plaintiff’s Complaint alleges that Capital One has violated

1 the federal TCPA by using an “automatic telephone dialing system” to telephone  
 2 Plaintiff without his consent. *See* Ex. A, Complaint, ¶¶ 11-14, 18. Therefore,  
 3 adjudication of Plaintiff’s Complaint requires an analysis and construction of federal  
 4 law. Thus, this Action is one which may be removed to this Court by Capital One  
 5 pursuant to 28 U.S.C. § 1441(a) and § 1331 because this Court would have had  
 6 original jurisdiction founded on Plaintiff’s claims arising under the TCPA.

7 6. Additionally, this Court has supplemental jurisdiction over the remaining  
 8 state law claim, because it “form[s] part of the same case or controversy.” 28 U.S.C.  
 9 § 1367(a). A state claim is part of the same case or controversy if it shares a  
 10 “common nucleus of operative fact” with the federal claim, and if they would  
 11 normally be tried together. *See, e.g., Trustees of the Constr. Indus. & Laborers*  
 12 *Health & Welfare Trust v. Desert Valley Landscape Maint., Inc.*, 333 F. 3d 923, 925  
 13 (9th Cir. 2003). The facts related to Plaintiff’s state law claim are intertwined with  
 14 and based upon his allegations of wrongdoing under the federal claim arising under  
 15 the TCPA. Specifically, like Plaintiff’s claims arising under the TCPA, the state law  
 16 cause of action involves Plaintiff’s allegation that Capital One made debt collection  
 17 calls to Plaintiff. The Court should therefore extend supplemental jurisdiction over  
 18 Plaintiff’s state law claim arising under the Rosenthal Act.

19 **D. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN**  
 20 **SATISFIED.**

21 7. Removal of this action is timely. Capital One first received notice of this  
 22 action when it received a copy of the Summons and Complaint on December 11,  
 23 2014. Therefore, this Notice of Removal is “filed within thirty [30] days after receipt  
 24 by the defendant . . . of a copy of [Plaintiff’s Summons and Complaint]” in  
 25 accordance with the time period mandated by 28 U.S.C. §1446(b).

26 8. Capital One is the only named defendant in the action and, therefore, no  
 27 consent of additional parties is required.

28 9. Venue lies in the United States District Court for the Central District of

1 California pursuant to 28 U.S.C. §1441(a) because the Action was filed in this  
2 District.

3 10. As stated above, pursuant to 28 U.S.C. § 1446(a), a true and correct copy  
4 of all process, pleadings and orders received by Capital One from Plaintiff in the  
5 Action are attached hereto as Exhibit A.

6 11. Written notice of the filing of this Notice of Removal will be promptly  
7 served upon Plaintiff. Capital One will also promptly file a copy of this Notice with  
8 the Clerk of the Superior Court of California, County of Riverside.

9  
10 **WHEREFORE** Capital One prays that the above Action now pending against  
11 it in the Superior Court of the State of California, County of Riverside, be removed  
12 therefrom to this Court.

13  
14 DATED: January 8, 2015

**DOLL AMIR & ELEY LLP**

15  
16 By: /s/ Chelsea L. Diaz.

17 CHELSEA L. DIAZ  
18 Attorneys for Defendant,  
19 CAPITAL ONE BANK (USA), N.A.  
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